

REMARKS

In the present amendment, claim 31 has been amended, whereby claims 1-31 are pending.

As will be discussed in the remarks below, the claim amendment changes the dependency of claim 31 to depend upon claim 21 of the elected group.

Applicants note an error in the Office Action Summary Form PTOL-326, which mistakenly states claims 1 - 23 being pending, however claims 1-31 are actually pending in the present application, which is also correctly addressed in the following detailed text of the Restriction Requirement.

Restriction Requirement

The Office Action asserts that the application contains the following groups of inventions, which are allegedly not linked as to form a single general inventive concept under PCT Rule 13.1. The Action asserts that Applicants are required to elect a single invention to which the claims will be restricted.

- I) Claims 1-2, 12-14, allegedly drawn to a chromoprotein from *Anthopleura inornata* having SEQ ID NO:1 and a method of use of said protein.
- II) Claims 5-6, 8, 10-11, allegedly drawn to a DNA encoding SEQ ID NO:1.
- III) Claims 3-4, allegedly drawn to a chromoprotein from *Anthopleura inornata* having SEQ ID NO:3.
- IV) Claims 7 and 9, allegedly drawn to DNA encoding said protein.

- V) Claims 15-16, 27-31, allegedly drawn to a fluorescent protein from *Trachyphyllia geoffroyi* having SEQ ID NO:5 and its fusion products.
- VI) Claim 17, allegedly drawn to a fluorescent protein from *Trachyphyllia geoffroyi* having SEQ ID NO:7.
- VII) Claims 18-19, allegedly drawn to a fluorescent protein from *Solymia Vitiensis* having SEQ ID NO:9.
- VIII) Claim 20, allegedly drawn to a fluorescent protein from *Solymia Vitiensis* having SEQ ID NO:11.
- IX) Claim 20, allegedly drawn to a fluorescent protein from *Solymia Vitiensis* having SEQ ID NO:13.
- X) Claim 20, allegedly drawn to a fluorescent protein from *Solymia Vitiensis* having SEQ ID NO:15.
- XI) Claim 20, allegedly drawn to a fluorescent protein from *Solymia Vitiensis* having SEQ ID NO:17.
- XII) Claims 21, 25-26, allegedly drawn to DNA encoding SEQ ID NO:5.
- XIII) Claim 22, drawn to DNA encoding SEQ ID NO:7.
- XIV) Claim 23, drawn to DNA encoding SEQ ID NO:9.
- XV) Claim 24, drawn to DNA encoding SEQ ID NO:11.
- XVI) Claim 24, drawn to DNA encoding SEQ ID NO:13.
- XVII) Claim 24, drawn to DNA encoding SEQ ID NO:15.
- XVIII) Claim 24, drawn to DNA encoding SEQ ID NO:17.

Election

In order to be responsive to the requirement for restriction, Applicants elect the invention set forth in Group XII, i.e., claims 21, 25, and 26.

Traverse

Notwithstanding the election of Group XII in order to be responsive to the Restriction Requirement, Applicants respectfully traverse the Examiner's requirement for restriction.

Applicants disagree with the reasons for the Restriction Requirement. Applicants respectfully point out that the claims of Group XII, for example, allegedly drawn to a polynucleotide should be linkable to the claims drawn to the protein encoded by said polynucleotide, i.e., the claims of Group V. Applicants refer to the "PCT International Search and Examination Guidelines" Part III, Chapter 10, example 39, which teaches that a claimed DNA molecule encoding protein X, shares a corresponding technical feature with the protein X. Accordingly, unity of invention is present between claims related to a DNA molecule and claims related to the protein encoded by said DNA molecule. Thus, at the very least, unity of invention is present between Groups V and XII.

Applicants further respectfully submit that amended claim 31 should be considered with the elected claims, since claim 31 is dependent upon an elected claim and recites a DNA encoding protein having SEQ ID NO: 5. Thus, Applicants respectfully request that the Examiner include claim 31 with Group XII.

In view of the foregoing it is respectfully requested that the Examiner reconsider the requirement for restriction, and consider, at the least, the claims of elected Group XII with the claims of Group V.

CONCLUSION

For the reason discussed above, it is respectfully submitted that the Examiner's requirement for restriction is improper and should be withdrawn. Withdrawal of the requirement for the restriction with the examination of all claims pending in this application is respectfully requested. Favorable consideration with early allowance of the pending claims is most earnestly requested.

If the Examiner has any questions, or wishes to discuss this matter, please call the undersigned at the telephone number indicated below.

Respectfully submitted,
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June 29, 2006
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